IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.4.2006

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.5483 of 2003

Tmt.M.Poonguzhali .. Petitioner

vs.

1. Director of School Education
   Chennai - 6

2. Chief Educational Officer
   Vellore,Vellore District

3. Secretary
   Ambur Co-operative Sugar mills
     Higher Secondary School
   Vadapudupet - 635 812
   Vaniyambadi Taluk,Vellore District.

4. Nagabalan,
   Ambur Co-operative Sugar Mills
     Higher Secondary School
   Vadapudupet - 635 812
   Vaniyambadi Taluk,Vellore District .. Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the third respondent to cancel the appointment of the fourth respondent and to appoint the petitioner as Secondary Grade Teacher as per Rule 15(4) of Tamil Nadu Recognised Private Schools (Regulations) Rules.

For petitioner : Mr.T.Sellapandian
For respondents : Mr.Mahalingam
Government Advocate for R1 and R2
Mr.G.Thilagavthi for R3
Mr.A.Nagarathinam for R4

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

This writ petition has been filed for the issuance of a writ of mandamus directing the third respondent to cancel the appointment of the fourth respondent and to appoint the petitioner as Secondary Grade Teacher as per Rule 15(4) of Tamil Nadu Recognised Private Schools (Regulations) Rules.

2. It is the case of the petitioner that Ambur Co-operative Sugar Mills, which is run and administered under the control of Government of Tamilnadu, started a number of schools to benefit the children of employees and cane growers. The schools have nursery, Primary and higher secondary levels. The Special Officer of the Society or the President of the Board of the Management will be the Secretary of the School. The petitioner had joined as Teacher in the Nursery School, on 19.2.1985. While she was working, she had passed the degree of B.Ed. in 1992 and she is already holding the degree of Bachelor of Science and now working as a Secondary Grade Teacher in the Nursery and Primary School. Initially, the petitioner was given consolidated pay and thereafter she was given time scale of pay. The petitioner further states that a Secondary Grade Teacher post fell vacant in the Higher Secondary School, which was not filled up as there was no qualified Scheduled Caste candidates with the Secondary Grade qualification. The Government had issued orders for the Government Schools to fill up the Scheduled Caste quota with B.T. qualified persons. Later, the Government had extended the same Government Order to the Management Schools also. The petitioner had stated that she belongs to a Scheduled Caste community and she is having B.Ed. degree qualification. She is working for the past 17 years under the same Management. However, she has not been considered for appointment to fill up the said post. Whereas, the Special Officer, acting as a Secretary, has called for a list of candidates from the employment exchange and conducted an interview and selected the fourth respondent herein as a Secondary Grade Teacher in the above mentioned School.

3. On coming to know of such appointment being made, the petitioner had made a request to the School to furnish a copy of the order of the appointment made in favour of the fourth respondent. The Special Officer, who is the Secretary of the School, declined to furnish the copy of the said order. Therefore, the petitioner could not prefer a regular appeal as provided under the Tamil Nadu Recognised Private Schools (Regulations) Act, 1974. However, the petitioner had made a representation to the first respondent, on 17.1.2003. The petitioner also

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

contends that she is given only a meagre salary of Rs.1,620/- per month and that even an Office Assistant or a Sweeper in a Government Institution is getting more, by way of salary. According to the petitioner, under Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1974, whenever any vacancy arises in a School it has to be filled up by appointing a person working in the school preferably from the teaching staff. Even though the petitioner has been working in the School from 1985, she has not been considered for the appointment. According to the said Rule, the management of the School can consider the candidates from outside, only if there are no qualified candidates available in the School before making a direct recruitment, that too, it should be only after the School Committee obtained prior permission from the concerned authority.

4. On the contrary, the third respondent herein states as follows:

The Ambur Co-operative Sugar Mills Higher Secondary School, Vadapudupet, in Vaniyambadi, Vellore District, was established as a High School during the year 1975. The School, which was initially established by the Ambur Co-operative Sugar Mills Ltd., for the benefit of children of the employees and registered members of the Sugar Mills had the approval of the competent authority, namely, the Director of School Education, Chennai, the first respondent herein. The third respondent Institution is approved and aided by the first respondent herein and therefore, the third respondent institution is bound by the provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1974, and the Rules framed thereunder and there can be no deviation whatsoever in appointing of both teaching as well as non-teaching staff and it should be done only with the approval of the first respondent and the second respondent herein. In the year 1997, a vacancy arose in the post of Secondary Grade Teacher on account of the resignation of one Ms.M.Vijayalakshmi, who came to be appointed in the reserved vacancy. Thereafter, the Management sought to fill up this vacancy calling for eligible candidates from the employment exchange. But, on account of non-availability of eligible candidates from the employment exchange, the vacancy could not be filled up. Thereafter, two more vacancies arose in the Secondary Grade Post, during the year 1997, in the O.C. category and in the year 2000, in the B.C. category. The said vacancies were duly filled up by sponsorship of eligible candidates from the employment exchange. However, the vacancy, which arose in the reserved category in the year 1997, remained

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

unfilled.

5. In the meantime, the Government of Tamil Nadu by G.O.Ms.No.301, School Education (B1 Department), dated 15.10.1999, permitted the appointment of B.Ed. qualified candidates to be appointed to the vacancy of Secondary Grade Teachers in the aided Schools on account of the inadequacy of candidates in the category of Secondary Grade Teachers in modification of the earlier Government Orders more particularly G.O.Ms.No.113, dated 14.3.1997, and G.O.Ms.No.432, School Education, dated 3.10.1997, thereby relaxing the ban imposed earlier by the Government in the matter of filling up the Secondary Grade Teacher Post. Thereupon, the third respondent herein had approached the employment exchange for sponsorship of eligible B.Ed. candidates to fill up the said vacancy, however, even in that regard the employment exchange reported non-availability of eligible candidates at the relevant point of time. Finally, in the month of September 2002, once again a requisition was made by the third respondent to the employment exchange for sponsorship of eligible candidates to fill up the vacant post of Secondary Grade Teacher in the Schedule Caste category. By a Notification 154/2003, Vellore District, the employment exchange by its proceedings X2/92/2002, dated 24.9.2002, sponsored 19 B.Ed. qualified Schedule Caste candidates for the post of Secondary Grade Teacher.

6. It is further stated that under the provisions of the Tamil Nadu Private Schools (Regulations) Act, more particularly Section 19 of the said Act, the compliance of the qualifications as contained in Rule 15(4) in the matter of appointment of teachers as a Secondary Grade Teacher is necessary. It is further stated on behalf of the third respondent school that already in view of the feasibility to appoint a B.Ed. Graduate Teacher to a Secondary Grade Teacher post in terms of G.O.Ms.No.301, School Education (V) Department, dated 15.10.1999, and in terms of G.O.Ms.No.79, School Education (U1) Department, dated 14.6.2002, which requires such of those B.Ed. qualified teachers being appointed in the Secondary Grade Teachers post to be designated as Middle Grade Graduate Teachers, the third respondent herein made a selection in terms of the provisions of the Act and Rules, in and by which a committee was constituted by the third respondent herein and the Secretary of the School Committee alone being a competent authority in terms of Section 16 of the Act made an appointment in terms of the selection made by the Committee to the fourth respondent herein, who was the successful candidate in terms of comparative merit in the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

selection process. Therefore, there can be no grievance for the petitioner herein against the selection process made by the third respondent which was in adherence to the Rules and Regulations and the procedure prescribed in the matter of selection.

7. It is further stated on behalf of the third respondent School that after selecting the fourth respondent he was appointed to the post of Secondary Grade Teacher, by order, dated 2.12.2002. On 4.12.2002, the fourth respondent had joined duty and after due entries were made by the third respondent Management the same was forwarded to the second respondent to be approved by the first respondent.

8. It is also the contention of the third respondent that the petitioner is a Nursery School Teacher in the School under the name and style of Ambur Sugar Nursery & Primary School established during the year 1975. It was imparting education at a primary level and was not having the recognition as contemplated under the provisions of the Act and the Management had appointed the teaching staff on consolidated pay. The petitioner was appointed in such a manner only during the academic year 2000-2001. It is further submitted that the Nursery School being administered independently by a School Committee, the petitioner cannot make a claim for consideration by the third respondent and that too for the post of Secondary Grade Teacher. It is further stated on behalf of the third respondent that the petitioner having participated in the selection process, since her name was sponsored through the employment exchange, now cannot turn back and claim that the selection of the fourth respondent through the said process is wrong and invalid. Further, It is open to the petitioner to challenge the order of the appointment by way of an appeal as provided under the Tamil Nadu Private Schools (Regulations) Act, 1974, and therefore, she cannot maintain the writ petition before this Court.

9. In view of the above circumstances and on a perusal of the documents filed, this Court is of the considered view that the petitioner who is working as a Primary School Teacher, in a different school, namely, The Ambur Sugar Nursery & Primary School cannot automatically claim for consideration for appointment as a Secondary Grade Teacher in the Ambur Co-operative Sugar Mills Higher Secondary School. Further, the petitioner having participated in the selection process cannot now question the legality or the validity of the process. Further, it is open to the petitioner to challenge the appointment of the fourth

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

respondent by way of an appeal as provided under the Tamil Nadu Private Schools (Regulations) Act,1974, if so advised.

10. For the above reasons, this writ petition cannot be sustained on merits and therefore, the writ petition is dismissed. No costs.

lan

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Director of School Education, Chennai - 6

2. The Chief Educational Officer
   Vellore,Vellore District

3. The Secretary
   Ambur Co-operative Sugar mills
   Higher Secondary School
   Vadapudupet - 635 812, Vaniyambadi Taluk,Vellore District

+ one cc to M/s. S. Mani, Advocate sr no. 22298
+ one cc to M/s. s. Thilakavathi, Advocate sr no. 21685

KLT(CO)
NM(05.05.2006)

W.P.No.5483 of 2003

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/